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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

BOBBY HUGHES,

Defendant and Appellant.

F042189

(Super. Ct. No. 671308-5)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Alan Simpson, Judge.

Deborah Prucha, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, and Carlos A. Martinez, Deputy Attorney General, for Plaintiff and Respondent.

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*Before Vartabedian, Acting P.J., Buckley, J., and Cornell, J.

Pursuant to a plea agreement, appellant Bobby Hughes pled guilty to battery by an inmate on a noninmate (Pen. Code, § 4501.5) and admitted an allegation that he had suffered a “strike” conviction.¹ The court imposed a prison term of four years, consisting of the two-year lower term, doubled pursuant to the three strikes law (Pen. Code, §§ 667, subd. (e)(1); 1170.12, subd. (c)(1)), and ordered that term to run consecutively to the term appellant was serving at the time of the instant offense, as required by Penal Code section 4501.5.

Appellant’s appointed appellate counsel has filed an opening brief which summarizes the pertinent facts, with citations to the record, raises no issues, and asks that this court independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.)

Appellant, in response to this court’s invitation to submit additional briefing, has submitted a document in which he argues that because he had previously been punished for his strike conviction, increasing his sentence in the instant case based on that conviction “violates double jeopardy.” There is no merit to this contention. “The Fifth Amendment of the United States Constitution and article I, section 15 of the California Constitution protect against multiple punishment for the same offense.” (*People v. \$1,930 United States Currency* (1995) 38 Cal.App.4th 834, 845) The imposition of sentence under the three strikes law, however, does not constitute multiple punishment for the same offense. Although appellant’s status as a repeat offender subjects him to harsher punishment under the three strikes law, he is not being punished in the instant case for his strike conviction. (*People v. White Eagle* (1996) 48 Cal.App.4th 1511, 1520.) “Recidivist statutes do not impose a second punishment for the first offense in violation of the double jeopardy clause of the United States Constitution.” (*Ibid.*) And

¹ We use the term “strike conviction” as a synonym for “prior felony conviction” within the meaning of the “three strikes” law (Pen. Code, §§ 667, subds. (b)-(i); 1170.12), i.e., a prior felony that subjects a defendant to the increased punishment specified in the three strikes law.

we see no reason why a different rule should obtain under the California Constitution. (*Raven v. Deukmejian* (1990) 52 Cal.3d 336, 353 [“ ‘cogent reasons must exist before a state court in construing a provision of the state Constitution will depart from the construction placed by the Supreme Court of the United States on a similar provision in the federal Constitution’ ”].)

Upon independent review of the record, we have concluded that no reasonably arguable legal or factual issues exist.

The judgment is affirmed.